DOCUMENT RESUME

ED 196 353 HE 013 358

AUTHOR Lavine, John M.; Lemon, Wallace L.
TITLE Report of the Regents Task Force on University Governance and Collective Bargaining.
INSTITUTION Association of Governing Boards of Universities and Colleges, Washington, D.C.
PUB DATE Mar 75
NOTE 40p.

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Administrative Policy; Board Administrator Relationship; *Collective Bargaining; College Administration; *College Faculty; Employment Practices; *Faculty College Relationship; Governance; Governing Boards; Higher Education; *Personnel Policy; *Policy Formation; State Colleges; State Legislation; *Statewide Planning
IDENTIFIERS *University of Wisconsin System

ABSTRACT

Problems of collective bargaining for the University of Wisconsin (UW) system and proposed solutions are considered, based on the efforts of a task force representing the various components of the system. Background information and a summary of the conclusions and recommendations of the resulting 1975 report are included. Major issues include the following: Is collective bargaining compatible with higher education and should bargaining rights be extended to faculty and academic staff? What subjects of bargaining should be permitted with faculty and academic staff? What new policies would be required in collective bargaining legislation to guide the relationships among the board of regents, administration, and faculty and academic staff? What principles and practices are essential components of the UW System that should be maintained in collective bargaining arrangements? Among the conclusions were that a collective bargaining system should protect the unique features of shared governance, and that it should be based upon a recognition of the dual role of faculty as employees and professionals. Appendices include information on legislation, statements from national authorities and campus individuals, and a model employment labor relations act for faculty in a public higher education institution. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED196353

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

AGB

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

HE013350

Report of the Regents Task Force on University Governance and Collective Bargaining

by John M. Lavine and Wallace L. Lemon
University of Wisconsin System

March 1975

©University of Wisconsin System, 1975
Printed in the United States of America
Editor: Charlotte B. Warren
Designer: Marlise Mason
Published by the Association of Governing Boards of Universities and Colleges, One Dupont Circle, Suite 720, Washington, D.C. 20036. 202/296-8400

University of Wisconsin System, Regents Task Force on University Governance and Collective Bargaining

Chancellor Werner A. Baum
UW-Milwaukee
Milwaukee 53201

Senator Everett V. Bidwell
140 South Capitol
Madison 53703

Professor Angela Burger
UW Center-Marathon County
Wausau 54401

Professor Jerry B. Culver
UW-La Crosse
La Crosse 54601

Senator James C. Devitt
415 Southeast Capitol
Madison 53703

Robert Durkin, Vice President
Milwaukee County Labor Council
1012 North Third Street
Milwaukee 53203

Professor Ted Finman
UW-Madison Law School
Madison 53706

Representative Herbert J. Grover*
240 North Capitol
Madison 53703

James Hamilton, President
United Council of Student Governments
1930 Monroe Street
Madison 53701

Professor Arthur Kelman
UW-Madison
Plant Pathology Department
Madison 53706

Senator Robert Knowles
238 South Capitol
Madison 53703

Regent John M. Lavine, *Chairman*
20-22 West Central Street
Chippewa Falls 54729

Representative Joseph L. Looby
488 North Capitol
Madison 53703

Wayne F. McGown, Deputy Secretary
Department of Administration
B114 State Office Building
Madison 53703

Regent Bertram N. McNamara
615 E. Michigan Avenue
Milwaukee 53202

Regent Frank J. Pelisek
250 E. Wisconsin Avenue
Milwaukee 53202

Professor Glen C. Pulver
UW-Extension
Agricultural Economics
Madison 53706

Professor Leon Schur
UW-Milwaukee
Center for Economic Education
Milwaukee 53201

Senior Vice President Donald K. Smith
UW Central Administration
Madison 53706

Regent James G. Solberg, *Vice Chairman*
147 Main Street
Menomonie 54751

Professor Marshall Wick
UW-Eau Claire
Eau Claire 54701

Representative Terry A. Willkom
217 West State Capitol
Madison 53703

Staff Director
Wallace L. Lemon
Associate Vice President for Administration
UW Central Administration
1762 Van Hise Hall
Madison 53706

Liaison & Technical Assistance
Bonnie Reese, Legislative Council
Richard Dunn, Department of Administration

*Resigned 9/74

". . . In terms of guarding flexibility, I think we also have to watch the development of collective bargaining rules . . . Sometimes they can become too rigid and reduce flexibility. And in that connection I'd like to call your attention to a report just issued by the Board of Regents of the University of Wisconsin System. They have made a recommendation for legislation in Wisconsin that there be a separate law for collective bargaining in higher education as compared with those in industry – that higher education is different in some respects from industry – that a clear cut division be made between faculty members as employees bargaining potentially through a union for wages and fringe benefits; as compared with faculty members as professionals interested in their academic freedom and their academic duties, which tend to be handled not on the basis of bargaining, but through shared power with the faculties having in many cases a great deal of power. I recommend it to you as an excellent report, just appeared. I see on your schedule that you have two sessions coming up: one on collective bargaining for beginners and one on collective bargaining for those who are more advanced. Let me say that in this field in higher education we're all beginners, and in my judgment there is no better place to begin than by reading the Wisconsin Report."

Remarks from a speech by Dr. Clark Kerr, Executive Director, Carnegie Council on Policy Studies In Higher Education

to the opening session of the 1975 National Conference on Trusteeship, April 20, Washington, D.C. Sponsored by the Association of Governing Boards of Universities and Colleges

by
john M. Lavine, Regent, University of Wisconsin System and
Wallace L. Lemon, Associate Vice President for Administration, University of Wisconsin System

CONTENTS

Introduction and Summary
Major Issues
1. Is collective bargaining compatible with higher education?
2. Should collective bargaining rights be extended to faculty and academic staff?
3. What subjects of bargaining should be permitted with faculty and academic staff that will be compatible with maintenance of the quality of Wisconsin's higher education system?
4. What new policies would be required in collective bargaining legislation to guide the relationships among the Board of Regents, administration, faculty and academic staff?
5. What principles and practices are essential components of the UW System that should be maintained in any collective bargaining arrangement developed for faculty and academic staff?
6. What specific provisions should be included in enabling legislation providing collective bargaining entitlement for University of Wisconsin faculty and academic staff?
Minority Statement
Appendix A – Legislative Background
Appendix B – Statements from Faculty, Students, Staff and Organized Groups
Appendix C – Summary of National Collective Bargaining Contest
Appendix D – Discussions with National Authorities
Appendix E – Model Employment Labor Relations Act for Faculty and Academic Staff in a Public Higher Education System or Institution

INTRODUCTION AND SUMMARY

Entitlement to bargain collectively, and to a lesser degree collective bargaining itself, is a phenomeon moving fairly rapidly across higher education in the United States. The Board of Regents of the University of Wisconsin System faced two problems as they dealt with the issues in March of 1974.

First, the Regents agreed with a faculty leader who told them that the bills for collective bargaining entitlement presented to the Wisconsin Legislature in the prior legislative session did not meet the faculties' minimum requirements. In the view of many of the faculty and of the Regents the traditional form of collective bargaining transferred to a higher education setting did not preserve some of the most important ingredients for quality higher education which existed prior to collective bargaining. Hence, the bills did not create an innovative new framework within which entitlement for collective bargaining could be cast.

Second, though the Regents eventually sought a model for collective bargaining which could apply to any institution or statewide system of higher education – large or small, public or private – special considerations had to be given to the fact that the University of Wisconsin System is the third largest in the United States. It has a faculty of approximately 14,000 persons, an academic and classified staff of 11,000, and an on-campus student body of 140,000 in 1974, expected to climb to between 146,000 and 150,000 by 1977. The UW System also deals with some 900,000 persons through its Extension System. It is comprised of fourteen, two-year, freshman-sophomore transfer centers; thirteen universities, all offering programs through the masters, and many the specialist degree; and two offering programs through the doctoral degree.

This immense system is directed by an unpaid Board of Regents, appointed by the Governor for seven-year terms, and confirmed by the State Senate.

In 1971 the state legislature established the policy for merging the former Wisconsin State Universities and the University of Wisconsin into the University of Wisconsin System. Following this, a legislative "merger committee" worked for a year in drafting the legislative language defining the specific authority and responsibilities of the participating parties. The final "merger" legislation recognized and defined the basic and traditional concept of "shared governance" in higher education in which the Board of Regents, administration, campuses and students participate in the decision making process.

Though most observers would agree that the merger had proceeded with surprising rapidity and tranquility, the newness of the System, some of the battle scars of putting it together and, mainly, the severity of the economic squeeze of 1973 and 1974, were all factors in the market place putting pressure on the System.

Against this backdrop then, began the Regent's search for a "new and innovative approach to collective bargaining." In March 1974, a faculty leader, Professor Clara Penniman of UW-Madison, recommended that a Regent committee be created to consider the problems of collective bargaining and their solution with a view to the future quality of the whole UW System.

The Regents' discussion supported the idea of such a study by a broadly representative group because a university presents different problems than those encountered in the usual industrial or public employee collective bargaining situation, particularly in such areas as tenure and faculty involvement in institutional governance. The Board stressed the need to examine the possibility of new approaches that recognize these distinct practices.

The Regents approved the concept and the President of the Board then appointed a Task Force which included four Regents, four legislators, a chancellor, seven faculty representing various faculty groups, a representative of the Department of Administration, one UW System senior vice president, a representative from organized labor, and a student.

At the first meeting of the Task Force, held in April 1974, it was decided that the Task Force needed a common base of information about the UW System organization and operation, about state and national trends in collective bargaining in higher education, and about the opinions and concerns of faculty, students, administrators, academic staff and the public. During the summer, papers were circulated on the organization of the UW System, on faculty governance and the tenure system, on the operation of Wisconsin's State Employment Labor Relations Act, and on views of the faculty and students.

A paper presented by Dennis H. Blumer, then director of the Academic Collective Bargaining Information Service, set forth an evaluation of collective bargaining in higher education as well as an up-to-date analysis of developments throughout the country. The paper emphasized that there had been little innovative development of collective bargaining models for higher education; rather, the traditional practices of collective bargaining in industry and public employment tended to be applied, resulting in some distortions and conflicts. Blumer noted that Congress was giving serious consideration to federal collective bargaining legislation which would include employees of public higher education institutions, partly because the states had apparently developed no distinctive models to meet their own needs.

Written views were received and discussed with a large number of representatives of groups of faculty, students, and administrators from across the UW System.

To solicit proposals on university governance and collective bargaining solutions a national contest was sponsored with the aim of obtaining ideas and innovative

thinking both from within the UW System and from across the country. Seventy-five entries were received. Two proposals for plans to permit collective bargaining by faculty on wages, fringe benefits and some limited economic issues without upsetting traditional faculty control of academic matters were awarded the major prizes.

In November in cooperation with the Regents Task Force, the Johnson Foundation, which also had provided a grant from which the contest prizes were funded, sponsored a two-day conference on university governance and collective bargaining. The conference provided a forum in which the Task Force members and a number of the nation's most recognized scholars and experts on the subject defined and discussed many of the basic principles, models, and concerns that have emerged in collective bargaining in higher education, and how they might apply to Wisconsin's particular system of higher education.

The Chairman of the Task Force prepared a working draft of a report which sought to identify and discuss the major issues and to make recommendations on them as well as the specifics to be included in enabling legislation. The draft was circulated to the Task Force members and others for review and comment, and the addressed in two day-long sessions. Each section of the report from beginning to end was discussed, amended, and voted upon.

The final report was approved by the Task Force on March 6, 1975. A summary of the conclusions and recommendations of the Task Force is as follows:

- To be compatible with the traditions and practices of shared authority in Wisconsin higher education, any system of collective bargaining should protect the unique features of university shared governance.
- The extension of some form of collective bargaining rights to faculty and academic staff appears to be a likely outgrowth of the extension of such rights to municipal, public school and state classified employees in Wisconsin and the continuing national trend to extend such rights to higher education institutions. In view of this, the Task Force concludes that it would be equitable and in the public interest to extend the opportunity to elect to bargain collectively to faculty and academic staff of the UW System, provided that enabling legislation protects and sustains the values of Wisconsin's system of higher education.
- The extension of collective bargaining rights to faculty should be based upon a recognition of their dual role as employees and professionals. As employees, faculty have a concern for their personal welfare and financial interests. As professionals, they join with the University administrators, Regents, and students in the development and execution of the instructional, research, and service functions of the University. Collective

bargaining should be permitted on economic issues related to their role as employees, while professional and academic matters should be dealt with through shared governance mechanisms. Collective bargaining for academic staff in the UW System should be permitted on economic issues and other conditions of employment.

- The merger law established and defined a charter for shared governance within the UW System and defines the powers and responsibilities of the Regents, President, chancellors, faculty, academic staff, and students. This charter and its fundamental principle of shared governance should continue to be the guiding policy for the UW System. One of the concerns in designing a collective bargaining entitlement for faculty and academic staff under such a charter lies in devising an arrangement that is workable and also accommodates and protects the heterogeneous character and the individual values of the institutions in the University of Wisconsin System.
- The following principles and practices of the University System are particularly essential for the people of Wisconsin to maintain a public university system with excellence and should be retained in any collective bargaining arrangement developed for faculty.
  - Institutional autonomy and separate missions for each institution
  - The tenure system
  - Academic freedom and diversity of opinion
  - A merit system for salary determination
  - Preservation of shared governance and the concepts embodied in Chapter 36, Wisconsin Statutes (1973)
  - Recognition of the responsibilities and authority of the Regents, President, chancellors, faculty, academic staff and students as expressed in Chapter 36, Wisconsin Statutes (1973) [See Appendix A of this Report.]
- Any enabling legislation providing collective bargaining rights for faculty and academic staff should be separate from and not a part of the state or municipal collective bargaining laws and include specific provisions in the following key areas:
  - Principles and practices not to be abridged
  - Collective bargaining rights
  - Scope of bargaining
  - Unit determination
  - The employer
  - Employee agents
  - Definition of faculty and academic staff
  - Elections
  - Hearing functions
  - Impasse procedures
  - Arbitration
  - Role of students
  - Procedure for approval of agreements
  - Fair share provision

A brief summary of the legislative history of collective bargaining in Wisconsin prior to March 1974, the formation date of the Regents Task Force, can be found in Appendix A of this report.

MAJOR ISSUES
ISSUE 1

Is collective bargaining compatible with higher education?

Collective bargaining has enjoyed success as a process for resolving labor-management conflicts in the private and public employment sectors. However, experience with collective bargaining in higher education is still so limited that the question is unanswered as to whether the process in a traditional industrial or public employee form can function in higher education without eroding the system of shared governance generally practiced in higher education.

The Task Force examined the concepts and practices of university governance in the UW System as well as in higher education throughout the country. It found, as Dr. Donald K. Smith, senior vice president of the UW System, stated in his document on "Shared Governance of Universities," that:

The most essential characteristic of traditional university governance is the assumption that important decisions are a matter of collegial or shared determination. Proposed actions are initiated at all levels of the University System and proceed by discussion and consultation to the point of decision. The presumptions underlying collegiality are: (a) that all groups involved in the enterprise have the common purpose of sustaining and advancing the recovery, organization, communication and expansion of knowledge; and (b) that the decision and actions which make this possible are best made finally in each case by the persons with the greatest professional expertise relevant to the particular decision. In this sense, governance is a shared enterprise, cooperatively maintained by members of the community. . . .

Extension of collective bargaining to public higher education in Wisconsin would mean that faculty and academic staff would have the right to form and join organizations of their own choosing and to designate these as their representatives for bargaining purposes with their institutions, and that the employer (the Board of Regents) and the faculty-designated representatives would have to negotiate in good faith. The process of collective bargaining as practiced in industry and public employment is a process of give and take aimed at achieving and implementing agreement between labor and management. Such give and take is quite different from the traditional "shared authority" context in which decisions are made in higher education.

The Education Commission of the States document "Collective Bargaining in Post Secondary Educational Institutions" (March 1974) states that:

Perhaps the most unique administrative feature of higher education in the United States is the aspiration of ad-

ministrators and faculty as to the proper principles of academic government. In the main universities and colleges either are governed by or are aiming ultimately for a system of governance commonly known as shared authority. The essence of the principle of shared authority is a recognition of the inescapable interdependence and interaction between the governing board, the administration and the faculty. These three components—faculty, administration, and board—have the joint authority and responsibility for governing the institution, and there needs to be adequate communication among these three groups and full opportunity for appropriate planning and effort.

The paper by Dr. Blumer, mentioned earlier, enumerated a number of classic areas of potential conflict in practices between higher education and collective bargaining, including collegial relationships versus adversarial relationships, individuality versus collective power, merit systems versus equal access to rewards, institutional autonomy versus equal power for employees, flexibility versus procedural safeguards, traditional internal relationships versus new faculty relationships, and student role versus two-party system with no student role.

Collective bargaining as it presently operates in industry and public employment may not be compatible with the "shared governance" traditions and practices of higher education. The concern of the Task Force has been to determine whether a new or modified form of collective bargaining can be adapted to higher education and whether clear safeguards can be provided to protect the unique features of Wisconsin's higher education system.

CONCLUSION

To be compatible with the traditions and practices of shared authority in Wisconsin higher education, any system of collective bargaining should protect the unique features of university shared governance.

ISSUE 2

Should collective bargaining rights be extended to faculty and academic staff?

More than 30 states have passed enabling legislation giving municipal, county and state employees the right to bargain. This development of new public employee legislation is the major force behind the movement to collective bargaining in higher education. Twenty-four states now have extended collective bargaining rights in legislation to faculty and staff employed in public colleges and universities. Faculty in private institutions have the right to bargain under provisions of the National Labor Relations Act. The U.S. Congress is considering legislation to extend collective bargaining rights to public employees including those in higher education. In Wisconsin municipal employees, public school teachers, and state classified employees are provided collective bargaining rights under separate enabling legislation.

The Academic Collective Bargaining Information Service reports that the past academic year has seen a

continuation of the growth trend in academic collective bargaining, although activity has slowed over prior years. It continues to be largely a public college phenomenon and primarily a community college movement, although most of the institutions organized in the past year were four-year institutions. While unionizing activity formerly was confined to relatively few states, activity is now branching out. For the first time collective bargaining is being considered by faculty and staff at some of the larger public universities in states with enabling legislation.

Given this pattern, the Director of ACBIS in his testimony to the Task Force concluded that there is "a certain inevitability about collective bargaining for Wisconsin higher education." At the same time he suggested that the Task Force should tailor the granting of rights to the peculiar needs of Wisconsin's system of higher education.

As it assessed the trends the Task Force was impressed with the continual growth of collective bargaining in higher education nationally and with the arguments that it would be equitable in view of the rights granted other state employees to extend the opportunity to bargain collectively to employees in higher education.

Recommendations by this Task Force favoring enabling legislation for collective bargaining are based on the assumption that the quality of higher education in Wisconsin will not be affected adversely because of such legislation. However, it is recognized that the experience of major universities is still very limited. Data are not available as yet to determine what the eventual impact will be on the quality of teaching, research and outreach functions following the initiation of the formal collective bargaining process.

CONCLUSION

The extension of some form of collective bargaining rights to faculty and academic staff appears to be a likely outgrowth of the extension of such rights to municipal, public school, and state classified employees in Wisconsin and the continuing national trend to extend such rights to higher education institutions. In view of this, the Task Force concludes that it would be equitable and in the public interest to extend the opportunity to elect to bargain collectively to faculty and academic staff of the UW System, provided that enabling legislation protects and sustains the values of Wisconsin's system of higher education.

ISSUE 3

What subjects of bargaining should be permitted with faculty and academic staff that will be compatible with maintenance of the quality of Wisconsin's higher education system?

Most state laws define the scope of bargaining in terms similar to the National Labor Relations Act which covers wages, hours, fringe benefits, and other terms and conditions of employment. The term "conditions of employ-

ment" can be interpreted to include the whole range of matters traditionally included under the concept of shared governance. This kind of broad scope collective bargaining results in a contract providing detailed statements on conditions of employment and inherently alters the relationship of management to employees, sharpening the role distinctions among the board, administration, faculty, and students, and creating the need for a statement of "management rights."

Since many of the traditional processes of shared governance hardly could be maintained under broad scope collective bargaining, the Task Force searched for a more limited definition or model which would protect these mechanisms and practices. The Task Force synthesized into a new model a number of concepts differentiating between economic issues and matters traditionally handled by shared governance. Under this model a system of faculty-university relationships would allow collective bargaining on limited economic issues while at the same time continuing faculty involvement in university governance. This model recognizes the dual role played by faculty members as both employees and professionals. On the one hand, as employees they have a concern for their personal welfare and financial interests, and on the other hand, as professionals, they join with the university administration, Regents, and students in the development and execution of the instructional, research and service functions of the university. Wages and fringe benefits would be bargainable subjects and matters that concern faculty and staff in their professional involvement would not. Some limited nonacademic matters also would be bargainable on an institutional level.

Neil S. Bucklew, vice president of Central Michigan University, in a paper presented to the Task Force, argued that this model is well suited to the special environment of a university because:

(1) The university is characterized by a unique governance system of "shared responsibility." Faculty perform a crucial professional role in this process. This process is essentially deliberative in nature and the judgments reached are often a result of extensive analysis, consideration and re-consideration. Governance policy has been dynamic in nature and open to a continuing reconsideration by the deliberative process. To force such issues as academic personnel decisions (tenure, promotion, reappointment, etc.) and curricular matters into an adversarial relationship would tend to result in poor decisions – in the long run if not the short run. The decisions and the process of the decisions would be qualitatively inferior if they were placed in the bargaining context.

(2) Faculty interest in collective bargaining is not intended to diminish or have the possibility of diminishing their professional responsibilities in the university community. Faculty when making a collective bargaining choice would not desire that the result of collective bargaining should impede or diminish their roles in established university governance processes. To assume a collective bargaining model that was comprehensive in na-

14

ture would be to ultimately place in jeopardy the established governance structure.

(3) The negotiation and contractualization of governance and academic decision making systems would have the effect of changing their nature. These processes are deliberate in nature and reflect a commitment to a system of peer evaluation. To place these subjects in a contractual clause means among other things that they are now become matters for contractual grievances. Contractual grievance procedures are defined as "allegations of contractual violations" and represent the method of assuring that the university interprets and applies the contract in an acceptable manner. The university is the "actor" and the union the "reactor" or grievant.

CONCLUSION

The extension of collective bargaining rights to faculty should be based upon a recognition of their dual role as employees and professionals. As employees, faculty have a concern for their personal welfare and financial interests. As professionals, they join with the University administrators, Regents, and students in the development and execution of the instructional, research, and service functions of the university. Collective bargaining should be permitted on economic issues related to their role as employees, while professional and academic matters should be dealt with through shared governance mechanisms. Collective bargaining for academic staff in the UW System should be permitted on economic issues and other conditions of employment.

ISSUE 4

What new policies would be required in collective bargaining legislation to guide the relationships among the Board of Regents, administration, faculty, and academic staff?

Any legislation providing for collective bargaining rights for faculty and academic staff should promote the character, purposes, and mission of the University of Wisconsin System as specified by the Legislature in the merger law. At this point it would be inappropriate to establish any statement of public policy that would drastically alter the recently-enacted merger law.

The merger law established a heterogeneous system in which institutions have individual missions and flexibility to carry them out. The law also provides a charter for "shared governance" within the University System. The bill specifies the powers and responsibilities of the Regents, President, chancellors, faculty, and students and defines the category of academic staff employees. Full rule making implementation of this charter will take another two years, although the major policy building blocks should be in place by the end of the 1974-75 academic year. The collegial environment of shared governance will take additional time to develop at institutions where this concept has not fully matured. From the perspective of many who worked on the development of the merger implementation law (Chapter 36, Wisconsin Statutes, 1973), it would be contrary to the

public policy established by the Legislature not to provide for the orderly implementation of the law's letter and spirit. In the case of shared governance, implementation of its spirit may take longer. The goal, however, is a vital one, since a strong tradition of shared governance is a characteristic of the nation's most prestigious and dynamic universities.

CONCLUSION

The merger law established and defined a charter for shared governance within the UW System and defines the powers and responsibilities of the Regents, President, chancellors, faculty, academic staff, and students. This charter and its fundamental principle of shared governance should continue to be the guiding policy for the UW System. One of the concerns in designing a collective bargaining entitlement for faculty and academic staff under such a charter lies in devising an arrangement that is workable and also accommodates and protects the heterogeneous character and the individual values of the institutions in the University of Wisconsin System.

ISSUE 5

What principles and practices are essential components of the UW System that should be maintained in any collective bargaining arrangement developed for faculty and academic staff?

In its examination of the question of whether and how to extend collective bargaining rights to higher education while safeguarding the unique features of Wisconsin's system, the Task Force identified the following principles and practices which it feels are essential for the people of Wisconsin to maintain a public university system with excellence and which best serves the needs of the people of the state:

(1) **University missions/institutional autonomy should be protected:** In keeping with the best interests of the people of Wisconsin as articulated in the merger statute and the merger implementation statute, the University of Wisconsin System is a federation of diverse educational institutions, each of which should have its own autonomy and have protection for its different mission under controls established by the Board of Regents.

(2) **Academic freedom and diversity of opinion should be preserved:** History has taught the people of Wisconsin that majority rule does not guarantee the rights of the minority. Nor is the will of the majority necessarily the final historical truth. It is in the best interests of the people of Wisconsin and, as a result its universities, to protect each individual professor's search for truth. This is the basic justification for tenure and academic freedom. This right should not be abridged.

(3) **The merit system should be maintained:** In order to keep in the universities of Wisconsin those persons who excel in teaching, research and public service and in order to attract such persons, the Task Force

believes that it is good policy to maintain a system of merit as the basis for salary and promotional adjustments within the UW System. A university is built upon the collective abilities of individuals. Its quality is based to a large extent on those individual strengths. The University of Wisconsin System supports the means and sanctions which do the utmost to encourage individual excellence and which lead to the making of the difficult, subjective judgments necessary to determine merit. The encouragement of individual excellence therefore requires that individual merit be recognized and rewarded and that the most discriminating judgment be used in making personnel decisions. Furthermore, each university in the UW System should retain those rights and privileges which enable it selectively to retain and reward – as well as attract – faculty on a merit basis.

(4) **The authority/responsibility of the Regents, the President, and chancellors should be preserved in conformity with statutory requirements.** Both the merger law and the merger implementation law dictate specific and implied policy-making and administrative responsibilities for the Regents, the President, and the chancellors. In all matters of policy the Regents have final authority. The President of the UW System – and under the President's direction, the Central Administration staff – has the authority to recommend, implement, and administer Regents' policies and to gather or be given such data and make such reports as are necessary to manage effectively the UW System on behalf of the Regents. Again, for effective management of the universities of the people of Wisconsin, the chancellors shall, at the pleasure of the Board, have specific authority and responsibilities for the management of the campuses. This authority and responsibility shall not be infringed upon except by the Regents. Further, administrative integrity implies the ability of the institution to be able to respond in a timely and reasonable manner to problems that face it – fiscal, political, management, etc. – without the necessity for shared governance considerations of those matters which are not primarily related to the academic program. This is necessary if institutional autonomy is to be maintained within a federation of universities such as the UW System.

(5) **Shared governance within the UW System should be protected and nurtured:** The protection of academic shared governance in cooperation with the administration should be preserved. Shared governance includes, but is not limited to, such matters as: faculty personnel policy (including appointment, promotion, tenure, non-renewal, termination, layoff and the resultant grievance procedures) calendar definition; workload assignment; admissions; transfers;

graduation requirements; curriculum and instruction; student participation in academic governance to a degree not covered by law; and initial reaction to budget priorities and peer judgment. Under Regent policy shared governance shall also deal with, but not be limited to, matters dealing with affirmative action and discrimination.

This shared governance model is justified in terms of the values and goals of the University of Wisconsin System – values and goals which are designed to serve the best interests of the people of the State of Wisconsin, as well as, at times, people from elsewhere within the country and around the world. The process of faculty governance involves a sharing in which both faculty and administration participate in policy-making, as differentiated from management functions. There needs to be a commitment to maintain and foster shared governance where it exists or where it is developing.

The merger implementation law also vests the faculty with "primary responsibility for the immediate governance of the institution" and gives the faculty the right to determine their own faculty organization structure.

(6) **Students' rights and responsibilities should be maintained as defined by law:** The merger implementation law provides that students of each institution shall – subject to the responsibilities of the Board of Regents, President, chancellor, and faculty – be active participants in the immediate governance and policy development for each institution.

(7) **The concepts and principles of Chapter 36 of the 1973 Wisconsin Statutes should not be abridged nor shall they be bargainable:** The concepts referred to in the preceding principles and those in Chapter 36 of the Wisconsin Statutes are statements by the Legislature of Wisconsin as to the principles which are essential for a high quality University of Wisconsin System. Hence, none of the principles contained herein nor any of those in Chapter 36 shall be directly or indirectly abridged by collective bargaining. Further, collective bargaining at any level in the University of Wisconsin System should not directly or indirectly limit, alter, refer to, or discuss matters covered by this list of principles and Chapter 36, Wisconsin Statutes (1973).

CONCLUSION

The following principles and practices of the University System are particularly essential for the people of Wisconsin to maintain a public university system with excellence and should be maintained in any collective bargaining arrangement developed for faculty:

a. *Institutional autonomy and separate missions for each institution*
b. *The tenure system*

c. *Academic freedom and diversity of opinion*
d. *A merit system for salary determination*
e. *Preservation of shared governance and the concepts embodied in Chapter 36, Wisconsin Statutes (1973)*
f. *Recognition of the responsibilities and authority of the Regents, President, chancellors, faculty, academic staff, and students as expressed in Chapter 36, Wisconsin Statutes (1973)*

ISSUE 6

What specific provisions should be included in enabling legislation providing collective bargaining entitlement for University of Wisconsin System faculty and academic staff?

The Task Force concludes that any collective bargaining legislation covering public higher education in Wisconsin should be separate from and not a part of the state or municipal collective bargaining laws. This is necessary in order to continue Wisconsin's public policy of recognizing the nature of higher education as contained in Chapter 36, Wisconsin Statutes (1973).

In consideration of the increased costs associated with the development of collective bargaining capabilities with additional administrative staff requirements – including labor relations experts, legal counsel, hearing officers, statisticians, and secretaries – it is essential that a careful study be initiated to evaluate the magnitude of such added costs. This should be done with the expectation that additonal state funds will be allocated and that these will be adequate to meet the added costs so that reductions in operational funds will not occur.

The Task Force spent some time in examining what specific provisions should be contained in any enabling legislation. Based upon its philosophical and policy conclusions stated in the previous sections of this report, the Task Force recommends the following:

(1) **Principles and practices not to be abridged:** Provision should be made specifically in the legislation that the following items will be maintained and not abridged:
   a. Institutional autonomy and separate missions for each institution
   b. The tenure system
   c. Academic freedom and diversity of opinion
   d. A merit system for salary determination
   e. Preservation of shared governance and the concepts embodied in Chapter 36, Wisconsin Statutes (1973)
   f. Recognition of the responsibilities and authority of the Regents, President, chancellors, faculty, academic staff, and students as expressed in Chapter 36, Wisconsin Statutes (1973)
   g. The provisions of the merger law shall take precedence over collective bargaining legislation and nothing negotiated through collective bargaining can result in diminishing the responsibilities and

rights provided for in the merger law.

(2) **Collective bargaining rights:** The legislation should give faculty and academic staff the specific right to form, join, or assist organizations and to bargain collectively through representatives of their choosing. They should also have the right to refrain from those activities, and nothing directly or indirectly should abridge or limit the rights granted them under the merger law.

(3) **Scope of bargaining:** Salaries, fringe benefits, and matters related to working conditions (which are not subjects of shared governance or management rights) may be bargained at the system, cluster, or institutional level. It should be a prohibited practice for the Board of Regents or the faculty to bargain about matters reserved to the faculty or otherwise outlined in the merger statute. Matters included within this definition or protected under Chapter 36's charter of shared governance include:

- a. Personnel policies, including policies and decisions on hiring, promotion, renewal and nonrenewal, tenure, layoff, discipline, and evaluation
- b. Policies and decisions on workload, individual work assignements and schedules
- c. Allocation of merit compensation
- d. Academic matters, including, but not limited to, policies and decisions on curriculum, grading, admissions, degrees, majors, and instructional methods
- e. Academic discipline and misconduct, including standards and procedures for dealing with allegations of academic dishonesty by students or professional misconduct by faculty and academic staff
- f. Grievance procedures related to any or all of the above
- g. The faculty governance structure itself at the campus, college, department, and sub-department level
- h. Allocations and operations of segregated fee-funded activities
- i. Policies and procedures of auxiliary services solely supported by student produced revenues

(4) **Unit determination:** Collective bargaining units should be at the institutional level with provision for one unit for faculty and one for academic staff at each institution.* Provision should be made that faculty and academic staff of an institution may by majority vote of each group constitute themselves into a single unit. (Notwithstanding the limitation on

*The institutions are UW-Eau Claire, UW-Green Bay, UW-La Crosse, UW-Madison, UW-Milwaukee, UW-Oshkosh, UW-Parkside, UW-Platteville, UW-River Falls, UW-Stevens Point, UW-Stout, UW-Superior, UW-Whitewater, UW-Center System, and UW-Extension.

unit determination, any law or medical school in the UW System may be constituted as a separate unit by majority vote of its faculty.)

(5) **Employer:** The Board of Regents, through its representatives, shall be responsible for negotiating and administering on behalf of the state collective bargaining agreements with faculty and academic staff. In this role the Board should maintain close liaison with the Governor, the Department of Administration, and with the Legislative Joint Committee on Employment Relations. The Board should establish a collective bargaining capability within the Central Administration for systemwide bargaining on wages and fringe benefits. This capability shall also offer consultation and support in institutional bargaining. The Board should delegate to the chancellors the responsibility to bargain on an institutional level, with assistance and coordination between campuses provided by Central Administration staff, on the permissible subjects of working conditions. The Board, pursuant to section 36.09(3)(j) of the statutes which provides "that the board shall establish salaries for persons not in the classified staff . . . " and pursuant to state budgetary procedures, shall make recommendations for adjusting compensation and employee benefits for faculty and academic staff not covered by a collective bargaining agreement.

(6) **Employee agents:** Representatives chosen for purposes of collective bargaining by faculty or academic staff can be any faculty or academic staff organization, including a faculty senate or other shared governance structure, whose purpose is to represent members of the faculty or academic staff in bargaining on matters within the scope of the legislation.

(7) **Definition of faculty and academic staff:** For purposes of defining unit membership, faculty should be defined as a member of the faculty as defined in section 36.05(8) who has an appointment of one-half time or more under section 36.13 of the statutes, and academic staff as a member of the academic staff as defined in section 36.05(1) with an appointment under section 36.15 and related rules.

(8) **Elections:** A petition by 30 percent of the faculty or academic staff shall be required as a showing of sufficient interest to undertake an election to determine the establishment of a collective bargaining unit. In the case of an election for a faculty or academic staff unit, provision shall be made on the same ballot for voting simultaneously on two issues: (1) the approval or disapproval of collective bargaining; and (2) which of the bargaining agents designated to be placed on the ballot shall represent the faculty or academic staff. (For the faculty election in a given institution, one of the proposed bargaining agents may be its faculty senate or other shared

governance structure authorized under section 36.09(4) of the Wisconsin Statutes.) Only if 50 percent plus one of those voting in the unit vote to approve collective bargaining under issue (1) shall the votes for representatives under issue (2) be counted. Then, if an organization under issue (2) receives 50 percent plus one of those voting in the unit, it shall be certified as the representative. If no proposed bargaining agent receives 50 percent plus one of the votes cast, the agent with the least number of votes shall be dropped from the ballot and another election shall be held. This procedure shall be repeated until one representative shall receive a majority of the votes cast. Provision shall be made that elections can be held only once during the year and not for at least a year following an election. Provision for change or discontinuance of existing representation should be provided similar to the provision in the State Employment Labor Relations Act.

(9) **Hearing functions:** It is essential that all cases requiring hearing and findings of fact affecting higher education regarding the handling of questions of recognition, certification, procedures for elections and hearings, unfair labor practices, provision of mediation services, etc., should be heard before one or more persons with expertise in higher education. Provision for this could be made in one of two ways:

- **a.** The establishment of a quasi-judicial tribunal separate from the Wisconsin Employment Relations Commission to deal with such cases.
- **b.** The stipulation in law that the Wisconsin Employment Relations Commission shall provide for either a hearing examiner or a special tribunal to conduct such hearings and findings of fact with the requirement that the examiner shall have special expertise in higher education or that one or more members of the tribunal shall have such expertise.

(10) **Impasse procedures:** Mediation services should be provided by the WERC in the actual bargaining of the agreement consistent with paragraph 9.

(11) **Arbitration:** Arbitration services may be provided if agreed to by the parties and may deal with questions of interpretation and application of the collective bargaining agreement. The parties may choose any mutually acceptable third party as arbitrator.

(12) **Role of students:** Recognizing the role of students as a vital and integral part of the UW System, the parties may by mutual agreement invite a representative student to be an observer at the negotiating sessions.

(13) **Procedure for approval of agreements:** Agreements on wages and fringe benefits reached between

representatives of the employees and the Board of Regents, after ratification by the employee group and Board of Regents, shall be submitted to the Joint Committee on Employment Relations and follow the same process for approval as provided in the State Employment Labor Relations Act.

(14) **Fair share provision:** A fair share arrangement similar to the SELRA provision should be permitted, but with a provision that any member may sign a "conscience clause" removing himself from the provisions of the agreement.*

CONCLUSION

Any enabling legislation providing collective bargaining rights for faculty and academic staff should be separate from and not a part of the state or municipal collective bargaining laws and include specific provisions in the following key areas: principles and practices not to be abridged, collective bargaining rights, scope of bargaining, unit determination, the employer, employee agents, definition of faculty and academic staff, elections, hearing function, impasse procedures, arbitration, role of students, procedure for approval of agreements, and fair share provision.

MINORITY STATEMENT

The undersigned Task Force members, while finding substantial agreement with the recommendations contained in the report, wish to register fundamental disagreement with it on the following two particular issues:

What should be the scope of bargaining for faculty and academic staff of the University of Wisconsin System?

Recommendation: Faculty and academic staff should be extended the right to bargain on all subjects relative to compensation and conditions of employment.

Rationale: Restricting the scope of bargaining to exclude all subjects that might be handled through the diverse mechanisms of faculty governance would hamper successful bargaining by either party. Attempts to limit the scope of bargaining to economic matters only fail to recognize the economic significance of nearly all conditions of employment. Since one of the primary purposes of collective bargaining is to provide organized and structured procedures for resolving conflict, it would be unwise to forego the use of bargaining on issues that existing governance structures have failed to resolve.

Experience has shown that in negotiations under the National Labor Relations Act when one side or the other wants to bargain on a particular issue, it is eventually bargained, whether or not it is legal under the Act. In Wisconsin the restricted scope of bargaining under the original State Employment Relations Act was found to be undesirable from the point of view of both the state

*This "conscience clause" was suggested by the Task Force and is considered the ideal. As this Report goes to press, however, the UW Regents' proposed statute may not include the conscience clause.

and the classified employees. Upon the recommendations of the Governor's Advisory Committee on State Employment Relations, these restrictions were removed by the 1972 Legislature. It would seem unrealistic to ignore these experiences and prohibit faculty from bargaining on working conditions when many unresolved conflicts exist in this area. Why not prepare collective bargaining legislation which will regularize and keep within the law the bargaining on all issues which will inevitably ensue?

Beyond this, it would seem to be startingly inconsistent to permit academic staff to bargain on working conditions while denying faculty the same right. Such an arrangement is certain to create serious morale problems.

Should individual members of a bargaining unit be permitted to opt out of an obligation to a fair share agreement?

Recommendation: There should be no provision for a "conscience clause" as provided in the majority report.

Rationale: If bargaining is conducted for a unit which has adopted a fair share agreement, all members of the unit should pay their "fair share" of the bargaining costs. The fair share agreement is only a financial obligation and does not require union membership as a condition of employment.

Jerry B. Culver
James C. Devitt
Robert Durkin
Marshall E. Wick

APPENDIX A
Legislative Background

In December 1970 the Governor's Advisory Committee on State Employment Relations concluded that collective bargaining for faculty in higher education institutions was inappropriate at that time. Their report, which led to the present State Employment Labor Relations Act, indicated that faculty members from the Wisconsin State Universities System were intensely concerned both with economic matters and with their limited role "in the broad range of academic decision making known as governance." In contrast, some faculty representatives of the University of Wisconsin, while expressing similar concern regarding economic issues, indicated satisfaction with the opportunities for faculty participation in governance, and opposition to collective bargaining.

While the Governor's Committee did not recommend collective bargaining, it did recognize the "unavoidability of collective bargaining if solutions are not found for at least two problems": compensation and faculty participation in university governance. The committee also recommended that the necessary steps be taken to provide the Wisconsin State Universities' faculty with an increased role in university governance.

In 1971 the University of Wisconsin System was created by state law (Chapter 100), combining the state's two public university systems – the Wisconsin State Universities System, comprised of nine universities and four two-year transfer centers, and the University of Wisconsin, comprised of doctoral campuses at Madison and Milwaukee, two undergraduate campuses, and ten two-year transfer centers – under a single Board of Regents. The merger brought together two systems with somewhat different traditions and practices, particularly in matters of institutional governance.

A merger implementation committee worked for a year to develop legislation setting forth new statutory definitions of authorities and responsibilities to permit the merger to function properly. The merger implementation bill, which created Chapter 36 of the Wisconsin Statutes, established a system of shared governance among the Board, administration, faculty and students. In addition the law provided specifically for a faculty role in the management of the campuses and gave them the right to determine their own faculty organization structure, to select representatives to participate in institutional governance, and most importantly, to have primary responsibility for academic and educational activities and faculty personnel matters. This board delegation afforded former Wisconsin State Universities faculty direct statutory authority and responsibilities for the first time.

During the 1973-75 legislative session, bills were introduced by The Association of University of Wisconsin Faculties (TAUWF), the American Federation of Teachers (AFT), and the National Education Association (NEA), providing for extension of collective bargaining rights to faculty and academic staff of the University of Wisconsin System. The bills were generally patterned after the provisions of the Wisconsin State Employment Labor Relations Act, which applies to state classified civil service employees.

During this same period, a number of University of Wisconsin System campuses experienced severe enrollment declines, which led to budget reductions resulting in tenured layoffs. This prompted growing concern among faculty for job security, in addition to the increasing impact of unprecedented inflation on their income.

Faculty groups appearing before the Wisconsin Assembly Labor Committee generally were united in their concerns on these economic matters, but disagreed over the potential impact of collective bargaining on other aspects of higher education, particularly the so-called "governance functions." The Committee recommended the TAUWF bill (AB 825A) for passage, but it was not taken up for consideration by the full Assembly during the 1973-75 session.

This bill was among those mentioned by Professor Clara Penniman, speaking for several of the UW System faculties, that did not meet the faculties' minimum requirements. At this time, March 1974, she presented the recommendation for the formation of a Regents Task Force on University Governance and Collective Bargaining.

At its initial meeting the Task Force agreed that the faculty, staff and students should be invited to submit their comments and concerns about university governance as it is presently structured, their suggestions for improving faculty participation, and opinions on the desirability of collective bargaining within the System. The invitation was published in a Faculty Memo and was expressed to the chancellors, with a request that they, in turn, inform their faculties and students.

In addition, to ensure that any organized groups within the UW System had an opportunity to voice their opinions, a letter was addressed to the leaders of all known groups such as faculty senates, university committees, faculty unions and student organizations inviting them to submit written statements and to have a representative respond to Task Force questions at meetings on September 27 and October 23, 1974.

Below are listed the individuals and groups who responded to these invitations:

AFL-CIO Local 79, UW-Milwaukee
J. L. Alexander, Assistant Professor, UW Center-Marshfield/Wood County
American Federation of Teachers, Local 79
American Federation of Teachers, Local 917, UW-Eau Claire
B. L. Barrington, Professor, UW Center-Marathon County

APPENDIX B
Statements from Faculty, Students, Staff and Organized Groups

R. Byron Bird, Professor, UW-Madison
R. Birnbaum, Chancellor, UW-Oshkosh
F. G. Cassidy, Professor, UW-Madison
J. R. Dillinger, Professor, UW-Madison
B. C. Easterday, Professor, UW-Madison
D. Fellman, Professor, UW-Madison
J. D. Ferry, Professor, UW-Madison
J. Fitzgerald, Associate Professor, UW Center-Marathon County
L. Gurnee, Associate Professor, UW-Madison
L. Haas, Chancellor, UW-Eau Claire
J. Hamilton, President, UW-Stevens Point Student Senate
W. H. Hansell, Assistant Professor, UW Center-Sheboygan County
V. Haubrich, Professor, UW-Madison
L. E. Hokin, Professor, UW-Madison
T. L. W. Johnson, Associate Registrar, UW-Madison
D. W. Kerst, Professor, UW-Madison
J. F. Meggers, Acting Chancellor, UW Center System
E. Moore, Assistant Professor, UW-Madison
R. Nilsestuen, President, United Council of Student Governments
W. Pautz, Chairman, UW-Eau Claire Faculty Senate
F. L. Pierce, Jr., Assistant Professor, UW Center-Marathon County
H. C. Pitot, Professor, UW-Madison
L. B. Rall, Professor, UW-Madison
R. W. Robinson, Professor, UW Extension
M. D. Schur, Administrative Secretary, UW-Milwaukee
State Department of Administration
D. Stepien, Specialist, UW-Madison
W. E. Stewart, Professor, UW-Madison
W. H. Stone, Professor, UW-Madison
R. N. Stromberg, Professor, UW-Madison
Student survey of faculty opinion
The Association of University of Wisconsin Faculties
J. G. Udell, Professor, UW-Madison
United Council of Student Governments
United Faculty-AFT Local 223
UW Center System Faculty
UW Central Administration
UW Chancellors
UW Extension University Committee
UW-Green Bay Faculty Senate
UW-LaCrosse Faculty Senate
UW-Madison University Committee
UW-Milwaukee Task Force on Collective Bargaining
UW Milwaukee University Committee
H. D. Weinbrot, Professor, UW-Madison
P. Willoughby, Assistant Professor, UW-Madison
Wisconsin Conference, American Association of University Professors
Wisconsin Education Association Council
V. K. Wrigley, Associate Professor, UW Center-Waukesha County

APPENDIX C
Summary of National Collective Bargaining Contest

A contest was sponsored by the UW System Regents to seek innovative ideas that would solve the real problems of university faculty while doing as much as possible to lessen or avoid the adversary nature of collective bargaining. The prizes were paid from a grant from the Johnson Foundation of Racine, Wisconsin. The contest was announced in local and national publications, and 75 entries were received from across the country.

The first prize for an overall plan was shared by Dennis H. Blumer, executive assistant to the chancellor of the University of Maryland, and Neil S. Bucklew, vice president of Central Michigan University.

Instead of calling for traditional collective bargaining on all issues on the university scene, the Blumer and Bucklew proposals limited bargaining to wages, fringe benefits and some economic issues. The plans recognized faculty governance as a unique, more sophisticated form of decision making for the university and its faculty, since faculty governance is non-adversary in nature.

Second prize was for the best single idea, and it was also equally divided. Half was awarded to Professor Michael Bleicher, a UW-Madison professor and leader of a faculty union local, whose basic idea was to avoid strikes by requiring that the faculty put a percentage of their salaries into an escrow fund to be matched by an even greater amount from the state, instead of stopping work in a strike. The other half of the award was given to the United Council of Student Governments for a proposal that students be included in faculty-state collective bargaining.

APPENDIX D
Discussions with National Authorities

In order to gain insight into the national picture, the Task Force asked Dennis H. Blumer, then director of the Academic Collective Bargaining Information Service, to inform them about the issues and the components of existing laws. Dr. Blumer provided a lengthy written analysis and attended the August 2, 1974, meeting where he answered questions from the Task Force members.

In November 1974 a conference on university governance and collective bargaining was sponsored by the Johnson Foundation in cooperation with the Regents Task Force. The purpose was to provide a colloquy in which the Task Force members and nationally known scholars and experts could define and discuss the issues involved in collective bargaining and governance in higher education institutions. The focus was on a discussion of the basic principles, models and concerns that have emerged in collective bargaining in higher education in the nation as well as how they might apply to Wisconsin's particular system of public higher education.

The following met for two days with the Task Force at "Wingspread," the Johnson Foundation Conference Center:

William H. Baumer
Assistant Vice President for Academic Affairs
State University of New York at Buffalo

James P. Begin, Associate Research Professor
Institute of Management and Labor Relations
Rutgers University

Dennis H. Blumer
Executive Assistant to the Chancellor
University of Maryland

Neil S. Bucklew, Vice President
Central Michigan University

Matthew S. Finkin, Associate Professor of Law
Southern Methodist University

Kenneth P. Mortimer, Associate Professor
Center for the Study of Higher Education
Pennsylvania State University

APPENDIX E
Model Employment Labor Relations Act for Faculty and Academic Staff in a Public Higher Education System or Institution

The following model labor relations act, providing for the extension of collective bargaining rights to faculty and academic staff in higher education institutions has been prepared on the assumption that (1) collective bargaining rights should be extended to faculty and academic staff in higher education and (2) such rights should be provided only through a separate and specific statute which recognizes and protects the traditions and practices of shared governance in higher education.

This model bill attempts to provide statutory language on all of the basic subject matter areas that need to be included in an employment relations act. The statutory language is meant to be

a guide rather than a specific prescription for any given state or university. The various sections of the bill are designed to provide for the insertion by reference of the authorities and responsibilities of the governing board, the administration, the faculty, the staff and students and to limit the subjects which may be bargained so as to protect the shared governance process.

.01 DECLARATION OF POLICY

The public policy of this state as to employment relations and collective bargaining in public higher education in the university of _____ in furtherance of which this subchapter is enacted, is as follows:

(1) Recognition that there are four major interests involved: That of the public, that of the university employees who are members of the faculty or academic staff, that of the students, and that of the state as an employer. These four interests are to a considerable extent interrelated. It is the policy of this state to protect and promote each of these interests with due regard to the particular traditions and practices in higher education and to the rights of others.

(2) Promotion of orderly and constructive employment relations for members of faculty and academic staff and the efficient administration of the university of _____ which is largely dependent upon the maintenance of fair, friendly and mutually satisfying employment relations, the protection and encouragement of faculty involvement in governance at institutional levels within the system, and the availability of suitable machinery for fair and peaceful adjustment of those controversies that may arise.

(3) Provision of a climate in which negotiation of permitted subjects of bargaining results in voluntary agreement between the state and its agents as an employer and its employees. For that purpose members of the faculty and academic staff may, if they desire, associate with others in organizing and in bargaining collectively through representatives of their own choosing.

(4) Recognition of the primacy of the concepts in * with emphasis on shared governance. Wherever conflict may arise between this subchapter and the provisions of * the provisions of * shall take precedence. No agreement shall result in diminishing the rights and responsibilities assigned by *

(5) Preservation and protection of the fundamental traditions and practices of the university of _____ including: institutional autonomy and separate missions for each institution; the tenure system; academic freedom and diversity of opinion; a merit system for salary determination; shared governance; division of responsibilities and authority among the regents, president, chancellors, faculty and students as expressed in * . In the interpretation and operation of this act these traditions and practices shall be maintained and not abridged. In accordance with these policies the board of regents shall establish an employment relations capability at the system and institutional levels and shall, in consultation with other agencies of state government, including the governor, legislature and [the state's central budget and management agency], represent the state in its responsibility as an employer under this chapter.

.02 DEFINITIONS. In this subchapter:

(1) "Academic staff" means professional and administrative personnel other than faculty with duties, and subject to types of appointments, that are primarily associated with higher education institutions or their administration.

(2) "Board" means the board of regents of the university of _____.

(3) "Commission" means the [state's] employment relations commission.

(4) "Collective bargaining" means the performance of the mutual obligation of the board by its representatives and the

*Insert reference to enabling statutes, administrative law or other regulations which best define your system of shared governance, division of responsibilities, academic freedom, tenure, etc., and other policies and practices which you seek to protect by restricting from the bargaining table.

representatives of its employees to meet and confer at reasonable times, in good faith; with respect to the appropriate subjects of bargaining provided in § .11 with the intention of reaching an agreement, or to resolve questions arising under such an agreement. The duty to bargain, however, does not compel either party to make proposals or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document.

(5) "Collective bargaining unit" or "appropriate unit" means a unit established under this subchapter. There shall be one such unit for faculty and one unit for academic staff at each institution within the system except that faculty of any law school or faculty of any medical school having the privilege of clinical practice may be constituted a separate unit under the procedure in § .04(2). Appropriate units of faculty and academic staff at the same institution or at another institution may, by majority vote of each group under the procedures provided in § .04(2) (e), combine into a single unit. Two or more bargaining units may bargain through the same representative.

(6) "Election" means a proceeding conducted by the commission in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this subchapter.

(7) "Faculty" means persons who hold the rank of professor, associate professor, assistant professor or instructor, who have appointments of 1/2 time or more, in an academic department or its functional equivalent in an institution and such academic staff as may be designated by the chancellor and faculty of the institution.

(7a) "Fair share agreement" means an agreement pursuant to § .15.

(8) "Institution" means any university or an organizational equivalent designated by the board.

(9) "Labor dispute" means any controversy with respect to the subjects of bargaining provided in this subchapter.

(10) "Labor organization" means any faculty or academic staff organization, including a faculty senate or other shared governance structure established under • whose purpose is to represent members of the faculty or academic staff in collective bargaining with the board on matters within the scope of collective bargaining.

(11) "Joint committee on employment relations" means a legislative committee created for the purpose of approving or disapproving tentative agreements between the board of regents and a labor organization. [It is recommended that some form of legislative organization be created to review and approve or disapprove tentative agreements and to provide for funding them. See §.13.]

(12) "Unfair labor practice" means any unfair labor practice specified in §.05.

(13) "Referendum" means a proceeding conducted by the commission in which faculty or academic staff in a collective bargaining unit may cast a secret ballot on the question of directing the labor organization and the employerer to enter into a fair share agreement. Any such agreement shall require that at least two-thirds of the eligible employees voting in any referendum must vote in favor of the agreement.

(14) "Employer" means the board of regents of the university of _____. It is the responsibility of the board through its representatives to negotiate collective bargaining agreements and to administer such agreements. It is the responsibility of the board initially to establish guidelines with the governor, the state's central budget and management agency, and the joint committee on employment relations and subsequently to maintain close liaison in the negotiation of agreements and the fiscal ramifications thereof. It is the responsibility of the legislative branch to act upon these portions of tentative

agreements negotiated by the board which require legislative action.

(15) "Strike" means any strike or other concerted stoppage, slowdown, interruption of work or refusal to work or perform their usual duties by faculty or academic staff.

(16) "Management" includes those personnel engaged predominantly in executive, managerial or supervisory functions, including at least those persons specified in [refer to a definition of these personnel from statutes, administrative rules or other regulations or laws that specify the kinds of positions included with management], supervisory personnel in the academic staff, and faculty members above the level of department chairpersons or their functional equivalents.

(17) "University" means any baccalaureate or graduate degree granting institution.

(18) "Faculty senate" means a representative legislative body elected by the faculty of a particular institution for the purpose of exercising some or all of the powers enumerated in * .

(19) "System" means the university of _____

(20) "Cluster" means a group of institutions with similar missions or programs designated by the board.

.03 RIGHTS OF FACULTY AND ACADEMIC STAFF. Members of the faculty and academic staff shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing under this subchapter, and to engage in lawful, concerted activities for the purpose of collective bargaining. Members of the faculty and academic staff shall also have the right to refrain from any or all of such activities.

.04 REPRESENTATIVES AND ELECTIONS

(1) A representative chosen for the purposes of collective bargaining by a majority of the faculty or academic staff voting in a collective bargaining unit shall be the exclusive representative of the faculty or academic staff in such unit for the purposes of collective bargaining. Any individual member of the faculty or academic staff in any collective bargaining unit may present grievances to designated representatives of the board in person or through representatives of his or her own choosing, and the designated representatives of the board shall confer with said member(s) of the faculty or academic staff in relation thereto if the majority representative has been afforded the opportunity to be present at the conference. Any adjustment resulting from such a conference may not be inconsistent with the conditions of employment established by the majority representive and the board.

(2) Upon petition of 30 percent of the faculty or academic staff in any collective bargaining unit expressing interest in representation by a labor organization the commission shall permit faculty or academic staff to determine for themselves whether they desire to establish themselves as a collective bargaining unit, or whenever a question arises concerning representation of members of the faculty or academic staff in a collective bargaining unit, the determination of such unit and its representative shall be conducted by secret ballot of faculty or academic staff in the following manner:

(a) Separate votes shall be taken on two issues: First, whether there shall be collective bargaining. Second, if there is to be bargaining, which organization is favored by the faculty or academic staff. Any organization demonstrating a showing of interest of at least 10 percent of the eligible voters in the unit shall be placed on the ballot. The commission may exclude from the ballot an organization which, at the time of the election, stands deprived of its rights under this subchapter by reason of a prior determination of its having engaged in an unfair labor practice.

(b) The votes shall be taken simultaneously. Unless a majority of those voting in the unit vote to bargain collectively, no votes for a particular representative shall be counted. If a majority vote

to bargain collectively, all ballots for representatives shall be counted.

(c) If one of the proposed representatives appearing on the ballot does not receive a majority of the votes cast, a runoff election(s) shall be held within 30 days dropping from the ballot the name of the representative who received the least number of votes. Runoffs shall be held within 30 days of the preceeding runoff until a representative is chosen by a majority of those voting.

(d) Regardless of the outcome, any election conducted under this section shall be a bar to any other election conducted under this section in the bargaining unit for a succeeding 12-month period. While an agreement between a labor organization and an employer is in force under this subchapter, a petition for election may be filed not more than 150 days nor less than 120 days prior to the expiration of such agreement. An election held pursuant to such petition shall be held only if the petition is supported by proof that at least 30 percent of the faculty or academic staff in the unit desire a change or discontinuance of existing representation.

(e) Where statutory units seek to combine together into a single unit, the commission shall, upon petition of no less than 30 percent of the faculty or academic staff in each unit, hold an election limited to the question of whether a majority of the faculty or academic staff in each unit desire to combine into such a single unit. Nothing in this section shall be construed to prevent two or more units from being represented by the same representative.

.05 UNFAIR LABOR PRACTICES

(1) It is an unfair labor practice for the employer, individually or in concert with others:

(a) To interfere with, restrain or coerce members of the faculty or academic staff in the exercise of their rights as guaranteed in § .03.

(b) To initiate, create, dominate or interfere with the formation or administration of any faculty or academic staff organization or contribute financial support to it, except that it shall not be an unfair labor practice for the administration of any institution or the board of regents to deal with or support a faculty senate or other form of faculty governance at the institution or system level, except that such support shall not be granted to such body to the extent that it functions as a labor organization. In addition, it is not an unfair labor practice for the employer to reimburse faculty or academic staff members at their stated compensation for the time spent during their regularly scheduled working hours conferring with the board's representatives and for attendance at commission or court hearings necessary for the administration of this subchapter. In addition, it is not an unfair labor practice for the board to provide released time or recognition for participation by faculty members in the faculty governance structure at any institution or at the system level. Managerial and supervisory personnel may maintain membership in professional organizations; however, as members of such organizations they shall be prohibited from those activities related to collective bargaining in which the professional organization may engage.

(c) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment, but the prohibition shall not apply to fair share agreements.

(d) To refuse to bargain collectively with a representative of the majority of its faculty or academic staff in an appropriate collective bargaining unit. Where the employer has a good faith doubt as to whether a labor organization claiming the support of a majority of its employees in an appropriate bargaining unit does in fact have that support, it may file with the commission a petition requesting an election as to that claim. It shall not be

deemed to have refused to bargain until an election has been held and the results thereof certified to it by the commission. Violations shall include, although not be limited to, the refusal to execute a collective bargaining agreement previously agreed upon orally.

(e) To violate any collective bargaining agreement previously agreed upon by the parties with respect to appropriate subjects of bargaining, including an agreement to arbitrate or to accept the terms of an arbitration award where previously the parties have agreed to accept such an award as final and binding upon them.

(f) To deduct labor organization dues from a faculty member or academic staff's earnings, unless the board has been presented with an individual order therefor, signed by the member of the faculty or academic staff personally and terminable by at least the end of any year of its life or earlier by the member of the faculty or academic staff giving at least 30 days but not more than 120 days written notice of such termination to the employer and to the representative organization, except where there is a fair share agreement in effect. The employer shall give notice to the representative of receipt of such notice of termination.

(2) It is an unfair practice for a member of the faculty or academic staff individually or in concert with others:

(a) To coerce or intimidate a member of the faculty or academic staff in the enjoyment of his legal rights, including those guaranteed under § .03.

(b) To coerce, intimidate or induce any officer, agent or representative of the board to interfere with any of its faculty or academic staff in the enjoyment of their legal rights, including those guaranteed under § .03 or to engage in any practice with regard to its faculty or academic staff which constitute an unfair labor practice if undertaken by him on his own initiative.

(c) To refuse to bargain collectively on matters set forth in § .11 with the duly authorized representative of the board. Such refusal to bargain shall include, but not be limited to, the refusal to executive a collective bargaining agreement previously agreed upon orally.

(d) To violate the provisions of any written agreement with respect to terms and conditions of employment affecting members of the faculty or academic staff, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept such awards as final and binding upon them.

(e) To coerce or intimidate a managerial officer, agent, or representative of the board to become a member or act in concert with the labor organization of which the employee is a member.

(f) For members of the faculty or academic staff to engage in, induce, or encourage any member of the faculty or academic staff to engage in a strike, or a concerted refusal to work or perform their usual duties.

(3) It is an unfair labor practice for any person to do or cause to be done on behalf or in the interest of the board or members of the faculty or academic staff or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by subsections (1) and (2).

(4) Any controversy concerning unfair labor practices may be submitted to the commission in accordance with § .14

.06 STRIKE PROHIBITED.** Strikes are prohibited. The provisions of § .05(2) (f) shall apply to strikes by members of the faculty or academic staff.

(1) Upon establishing that a strike is in progress, the board may at its option either seek an injunction or file an unfair labor practice charge with the commission under § .05(4) or both. The existence of an administrative remedy shall not constitute grounds for denial of injunctive relief.

**As this publication goes to press, the subject of the right to strike by public employees is under legislative review. If the Wisconsin Legislature changes the prohibition on the right to strike for public employees, it is assumed that it would also change for the faculty of higher education institutions.

(2) The occurrence of a strike and the participation therein by a member of the faculty or academic staff do not affect the rights given to the board to deal with the strike, including:

(a) The right to impose discipline, including discharge, or suspension without pay, of any member of the faculty or academic staff participating therein;

(b) The right to cancel the reinstatement eligibility of any members of the faculty or academic staff engaging therein; and

(c) The right of the board to request the imposition of fines, either against the labor organization or the members of the faculty or academic staff engaging therein, or to sue for damages because of such strike activity.

.07 MANAGEMENT RIGHTS. Nothing in this chapter shall be construed to limit or abridge the respective powers of the board, the president, the chancellors, faculty, and students as set forth in *

.08 MEDIATION. The commission may appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the commission shall have any power of compulsion in mediation proceedings.

.09 ARBITRATION. The parties may, by agreement, resort to arbitration to settle questions concerning the interpretation and application of the collective bargaining agreement. [Most states have laws which define arbitration and spell out the process to be followed in selecting an arbitrator, making an award, making an appeal, etc. The policies and procedures of the particular state should be referenced and be governing in adapting this model.]

.10 FACT FINDING

(1) If a dispute has not been settled after a reasonable period of negotiation and after settlement procedures, if any, established by the parties have been exhausted, the representative, which has either been certified by the commission after an election, or has been duly recognized by the board, as the exclusive representative of faculty and academic staff in an appropriate collective bargaining unit, and the board, its officers and agents are deadlocked with respect to any dispute between them arising in the collective bargaining process, the parties jointly may petition the commission, in writing, to initiate fact finding under this section and to make recommendations to resolve the deadlock.

(2) Upon receipt of a petition to initiate fact finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock in fact exists. After its investigation, the commission shall certify the results thereof. If the commission decides that fact finding should be initiated, it shall appoint a qualified, disinterested person or three-member panel, when jointly requested by the parties, to function as a fact finder.

(3) The fact finder may establish dates and place of hearings and shall conduct the hearings under rules established by the commission. Upon request, the commission shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties and the commission. In making such findings and recommendations, the fact finder shall take into consideration among other pertinent factors the principles vital to the public interest in efficient and economical governmental administration. Cost of fact finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of costs to the parties, he shall submit a copy thereof to

the commission.

(4) Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute at any time prior to the issuance of his recommendations.

(5) Within 30 days of the receipt of the fact finder's recommendations or within such time period mutually agreed upon by the parties, each party shall advise the other, in writing, as to the acceptance or rejection, in whole or in part, of the fact finder's recommendations. Failure to comply with this subsection, by the board or representative of the faculty or academic staff constitutes a violation of § .05(1) (d) or (2) (c).

.11 SUBJECTS OF COLLECTIVE BARGAINING – FACULTY. The board, through its agents and representatives of the faculty may bargain collectively over salaries, fringe benefits, and matters related to working conditions which are not subjects of shared governance or management rights.

(1) Matters which are considered to be within the scope of shared governance under • include but shall not be limited to:

(a) Personnel policies, including policies and decisions on hiring, promotions, renewal and non-renewal, tenure, layoff, discipline and evaluation.

(b) Decisions on individual workload, work assignments and schedules.

(c) Allocation of merit compensation.

(d) Academic issues traditionally resolved through shared governance mechanisms, including but not limited to policies and decisions on curriculum, grading, admissions, degrees, majors and instructional methods.

(e) Academic discipline and misconduct, including standards and procedures for dealing with allegations of academic dishonesty by students or professional misconduct by faculty or academic staff.

(f) Grievance procedures related to any or all of the above.

(g) The faculty governance structure itself at the institution, college, department and sub-department levels.

(h) Allocations and operations of segregated fee-funded activities.

(i) Policies and procedures of auxiliary services supported by revenues derived solely from students.

(2) It shall be an unfair labor practice for the board or its representatives or members of the faculty and academic staff and their representatives to bargain concerning the matters of shared governance outlined above and management rights as they are defined in § .07.

.12 SUBJECTS OF BARGAINING – ACADEMIC STAFF. Academic staff may bargain concerning salaries, fringe benefits and other conditions of employment. Such bargaining shall not abridge any of the provisions of • and § .07.

(1) The board shall be prohibited from bargaining with representatives of the academic staff on:

(a) The mission and goals of the system, clusters, or institutions.

(b) The provisions of this subchapter and • .

(c) Policies, practices and procedures under • including but not limited to original appointments and promotions specifically including recruitment, examinations, appointments, and policies with respect to probationary periods.

(2) The board shall not be required to bargain with members of the academic staff concerning its right to:

(a) Carry out the statutory mandate and goals assigned to _____ utilizing personnel, methods and means in the most appropriate and efficient manner possible.

(b) Manage the academic staff and other employees of the agency; hire, promote, transfer, assign or retain employees in positions within the agency; and in that regard establish reasonable work rules.

(c) Suspend, demote, discharge or take other appropriate disciplinary action against the members of the academic staff for just cause; or to lay off members of the academic staff in the event of lack of work, or funds or other conditions under [cite any authority in the statutes, administrative law or other regulations relating to lapse of appointments] pursuant to rules of the board.

.13 NEGOTIATION OF WAGES AND FRINGE BENEFITS – AGREEMENTS. Tentative agreements reached at the institutional, cluster or system level shall be forwarded to the board of regents for their approval after ratification by the labor organization.

(1) Tentative agreements involving salaries, fringe benefits or other direct economic benefits for members of the faculty or academic staff reached between the board of regents, acting for the state, and any certified labor organization shall, after official ratification by the union and approval by the board, be submitted to the joint committee on employment relations, which shall hold a public hearing before determining its approval or disapproval. If the committee approves the tentative agreement, it shall introduce in companion bills, to be put on the calendar, that portion of the tentative agreement which requires legislative action for implementation, such as salary and wage adjustments, changes in fringe benefits, and any proposed amendments, deletions or additions to existing law. Such bills shall not be amendable. The committee may, however, submit suitable portions of the tentative agreement to appropriate legislative committees for advisory recommendations on the proposed terms. The committee shall accompany the introduction of such proposed legislation with a message that informs the legislature of the committee's concurrence with the matters under consideration and which recommends the passage of such legislation without change. If the joint committee on employment relations does not approve the tentative agreement, it shall be returned to the parties for renegotiation. If the legislature does not adopt without change that portion of the tentative agreement introduced by the joint committee on employment relations, the tentative agreement shall be returned to the parties for renegotiation.

(2) No portion of any tentative agreement involving salaries, fringe benefits or other direct economic benefits shall become effective separately.

(3) Agreements shall coincide with the fiscal year or biennium.

(4) It is the declared intention under this subchapter that the negotiation of collective bargaining and its approval by the parties should coincide with the overall fiscal planning and processes of the state.

(5) Portions of tentative agreements which do not involve salaries, fringe benefits, or other direct economic benefits for members of the faculty and academic staff shall be effective after ratification by the labor organization and approval by the board. If any portion of such agreement requires approval pursuant to § (1) because it involves salaries, fringe benefits or other direct economic benefits the remainder of such agreement approved under this section shall not take effect until after the procedures in § (1) are complete.

(6) All such agreements shall be reduced to writing and signed by the parties.

.14 COMMISSION PROCEDURES

(1) Any controversy concerning unfair labor practices may be submitted to the commission as provided in • except that the commission shall fix a hearing on complaints involving alleged violations of § .06 within three days after filing of such complaints and notice shall be given to each party interested by service on him personally, or by telegram, advising him of the nature of the complaint and of the date, time and place of the hearing thereon.

(2) The commission may adopt reasonable and proper rules

relative to the exercise of its powers and authority and proper rules to govern its proceedings and to regulate the conduct of all elections and hearings.

(3) In all contested cases under this subchapter where the initial hearing is conducted and initial findings of fact and orders are issued by an examiner or substitute tribunal and not by the full commission, the commission shall insure that the examiner or one or more members of the tribunal have special expertise in higher education. The tribunal may be either a three-member panel appointed by the commission or a seven-member panel submitted to the parties by the commission with each party striking two names.**

(4) Declaratory ruling. Whenever a dispute arises between the board and a representative of the faculty or academic staff concerning the duty to bargain on any subject, the dispute may be resolved by the commission on petition for a declaratory ruling. The decision of the commission shall be issued within 15 days of submission and shall have the effect of an order issued under * . The filing of a petition under this paragraph shall not prevent the inclusion of the same allegations in a complaint involving unfair labor practices in which it is alleged that failure to bargain on the subjects of the declaratory ruling is part of a series of acts or pattern of conduct prohibited by this subchapter.

.15 FAIR SHARE AGREEMENTS.

(1) A fair share agreement means an agreement between the board and a labor organization under which all or any of the faculty or academic staff in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration. Such cost shall be measured by the amount of dues uniformly required of all members. Any such agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization. Unless the parties agree to an earlier date, the fair share agreement shall take effect 60 days after certification by the commission that the referendum vote favored the fair share agreement. The employer shall be held harmless against any and all claims, demands, suits or other forms of liability which may arise for actions taken or not taken by the employer in compliance with this subsection. All such claims, demands, suits or other forms of liability made by employees or local labor organizations shall be under this subchapter. In addition, any such agreement shall contain a clause which permits any member of the faculty or academic staff, by a simple written declaration of philosophical objection to participation in any collective bargaining, to remove himself from the provisions of the fair share agreement.***

(2) No fair share agreement shall become effective unless authorized by referendum. The authorization of such fair share agreement shall continue thereafter subject to the right of the employer or labor organization concerned to petition the commission to conduct a new referendum on the subject. Such petition must be supported by proof that at least 30 percent of the faculty or academic staff in the collective bargaining unit desire that the fair share agreement be discontinued. Upon so finding, the commission shall conduct a new referendum. If the continuance of the agreement is approved by the referendum by at least the number of faculty or academic staff required for its initial authorization, it shall be continued in effect, subject to the right of the employer or labor organization to later initiate a further vote following the above procedure. If the continuation of the agreement is not supported in any referendum, it shall be deemed terminated at the termination of the collective bargaining agreement, or one year from the date of the certification of the result of the referendum, whichever is earlier. The commission shall declare any fair share agreement suspended upon such

**Note: See addendum. It is essential that all cases requiring hearing and findings of fact affecting higher education regarding the handling of questions of recognition, certification, procedures for elections and hearings, unfair labor practices, provision of mediation services, etc., should be heard before one or more persons with expertise in higher education. To this end it is desirable that any collective bargaining statute for higher education provide for such a requirement. Provision could be made in one of two ways:

a. The establishment of a quasi-judicial tribunal separate from the employment relations commission to deal with such cases. (See addendum)
b. The stipulation in law that the employment relations commission shall provide for either a hearing examiner or a special tribunal to conduct such hearings and findings of fact with the requirement that the examiner shall have special expertise in higher education or that one or more members of the tribunal shall have such expertise.

***See note, Major Issue 6, section 14.

conditions and for such time as the commission decides whenever it finds that the labor organization involved has refused on the basis of race, sex, age, national origin or creed to receive as a member any member of the faculty or academic staff in the bargaining unit involved, and such agreement shall be made subject to the findings and orders of the commission. Any of the parties to such agreement or any member of the faculty or academic staff covered thereby, may come before the commission, as provided in * and allege a violation of this provision.

(3) A stipulation for a referendum executed by an employer and a labor organization may not be filed until after the representation election has been held and the results certified.

(4) The commission may, under rules adopted for that purpose, appoint as its agent an official or employee of the board or agency involved to conduct the referenda provided for herein.

.16 OTHER EMPLOYEES. The board of regents, pursuant to [cite enabling statutes, administrative law or other regulations] shall establish salaries for persons not in the classified staff and pursuant to state budgetary procedures shall make recommendations for adjusting compensation and employee benefits for faculty and academic staff that are not covered by a collective bargaining agreement and other employees.

ADDENDUM

Creation of an independent higher education employment relations commission.

Create sections _____

Higher Education Employment Relations Commission. There is created a higher education employment relations commission. The commission shall consist of three persons appointed for staggered six-year terms. Each of the members shall have at least three years experience in higher education labor relations at the time of their appointment.

Program Responsibilities. The higher education employment relations commission shall have the program responsibilities specified for the commission under subchapter .03 of chapter .14.

Change § .02(3) of the model statute to read:

.02(3) "Commission" means the higher education employment relations commission established under section _____.

APPROPRIATIONS SECTION

An appropriation should be included in the bill to provide for the cost of additional staff and expenses necessary for the conduct of negotiations and general administration of the act.

AGB: What It Is, What It Can Do

The Association of Governing Boards of Universities and Colleges (AGB) is a service organization whose function is to assist and strengthen the lay leadership that has always lent a unique strength to our higher education system. AGB is the only national organization whose primary concern is the problems and responsibilities of trustees and regents in all types of institutions—private, public, two-year, and four-year. Its membership includes the governing, coordinating and advisory boards which serve more than 960 colleges and universities, with some 14,000 individual members.

The primary services of AGB include publications designed to educate and inform trustees; semiannual national conferences to provide a forum for meeting and exchanging ideas; a program of Trustee Leadership Development consisting of workshops and seminars that help trustees to improve their performance; and an Information Clearinghouse that supplies prompt and efficient information service to all members.

A significant aspect of AGB membership is its inclusion of the administrative heads (presidents and chancellors) along with governing boards. A basic objective of AGB is to facilitate the development and maintenance of a constructive relationship between presidents and trustees. Presidents attend AGB conferences with members of their boards and assist the Association through the Advisory Council of Presidents.

AGB Publications

The Association has two regular publications: *AGB Reports* and *AGB News Notes*. *AGB Reports* is a bi-monthly journal containing articles of special interest to trustees, some originated by the Association, others selected or excerpted from the large volume of higher education literature, in order to keep busy members informed on important current thinking. Frequent articles treat the special problems of community colleges and other types of institution.

AGB News Notes is a monthly newsletter on higher education edited for the trustee audience. Today even the most committed trustee has great difficulty in finding a satisfactory means of keeping up with the flow of news, from Washington and from around the country, of importance to his or her institution. Innovations and bright ideas from other campuses, precedents in legal/constitutional affairs, new federal guidelines, announcements of pending legislation, trends in enrollment, tuition and financing, are conveniently capsuled in *AGB News Notes*. A feature of each issue is "The Trustee's Bookshelf," flagging new books and booklets of special value to trustees.

In addition to *Reports* and *News Notes*, special AGB publications deal in depth with subjects of major concern. Among recent popular special publications have been *The Effective Use of Resources: Financial and Human* by Howard R. Bowen and Stephen K. Bailey; *The Future of Trusteeship* by John W. Nason, former Director of Studies for the AGB Commission on the Future; and *The Community College in a New Period of Change*, by Joseph P. Cosand. Soon to appear is a publication of exceptional value for new trustees, *Effective Trusteeship: Some Guidelines for New Trustees and Regents*, by J. L. Zwingle, former president of AGB.

University of Wisconsin System

- Universities
- Freshman-Sophomore Centers

UW Extension Offices in every County.